APPEAL NO. 022667
FILED DECEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 17, 2002. The hearing officer determined that the respondent's (claimant) date of injury is _____; that she sustained a compensable injury to her low back and an umbilical hernia; that she did not timely report an injury to her employer; that she had good cause for failure to timely notify her employer of the occurrence of a work-related injury; and that she had disability from January 25, 1999, through the date of the CCH. The appellant (carrier) appealed on sufficiency of the evidence grounds. The appeal file does not contain a response from the claimant. The hearing officer's date of injury determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury and had disability from January 25, 1999, through the date of the CCH. These were questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer did not err in determining that the carrier is not relieved from liability under Section 409.002 because the claimant had good cause for failing to timely notify her employer of the injury. The carrier disputes that the claimant established good cause and asserts that the hearing officer failed to apply the proper standard. The test for good cause is that of ordinary prudence; that is, whether the employee has prosecuted his or her claim with the degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances. Hawkins v. Safety Casualty Company, 207 S.W.2d 370 (Tex. 1948). Whether good cause exists in a particular case is a question of fact for the hearing officer to decide (Texas Workers' Compensation Commission Appeal No. 93184, decided April 29, 1993), and a claimant's conduct must be examined in its totality to determine whether the test of ordinary prudence was met (Texas Workers' Compensation Commission Appeal No. 93544, decided August 17, 1993). In view of the evidence presented, the hearing officer could find that the claimant trivialized her injury. Nothing in our review of the record reveals that the hearing officer's good cause determination is so contrary to the

great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain, *supra*.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLEY, EXECUTIVE DIRECTOR
T.P.C.I.G.A
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

_____
Veronica Lopez
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

CONCURRING OPINION:

I concur in the result, because the primary problem with this case that renders a trivialization good cause a little absurd is that the hearing officer simply "harked back" to the date of the first symptom in fixing the date of injury. As a result, the stipulations don't match the "date of injury" and a notion of trivialization is very strained.

What the evidence supports conceptually is that the claimant thought she was having symptoms from her older injuries until she had a new sharp pain on November 23, 1998, at which point she knew or should have known she had an injury (or, more plausibly, sustained a specific injury at this point). She then gave timely notice.

_____
Susan M. Kelley
Appeals Judge